

ASSEMBLY BILL

No. 506

Introduced by Assembly Member Mitchell

February 20, 2013

An act to amend Section 121020 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 506, as introduced, Mitchell. HIV testing: infants.

Existing law provides that a child may come within the jurisdiction of the juvenile court and become a dependent child of the court in, among others, cases of abuse and neglect. Under existing law, when a minor has been, or has a petition filed with the court to be, adjudged a dependent child of the court, the court may authorize, or order that a social worker may authorize, medical care for the minor, as prescribed. Under existing law, a social worker may, without court order, authorize medical care for a minor in emergency situations, as specified.

Existing law authorizes a peace officer or social worker to take into temporary custody a minor when there is reasonable cause for believing that the minor is in immediate need of medical care or is in immediate danger, as specified. Under existing law, when a minor is taken into temporary custody and is in need of medical care, the social worker may, upon recommendation of the attending physician and surgeon, authorize the performance of medical care, as specified. Under existing law, when allegations of child abuse come to the attention of the local law enforcement agency or local child welfare department and the child is taken into protective custody, the agency or department may cause the minor to undergo a physical examination under certain circumstances.

Existing law provides that a minor under 12 years of age is deemed not competent to give consent for an HIV test to be performed, and authorizes the minor's parent, guardian, conservator, or other person lawfully authorized to make health care decisions on behalf of the minor to provide consent for the test. Under existing law, a court may also provide consent for the test to be performed on a minor who is adjudged to be a dependent child of the court.

This bill would authorize a social worker or the treating health care provider, as specified, to provide consent for an HIV test to be performed on an infant under one year of age when the infant has been taken into temporary custody or has been, or has a petition filed with the court to be, adjudged a dependent child of the court and the infant is undergoing a physical examination or receiving medical care.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 121020 of the Health and Safety Code
2 is amended to read:
3 121020. (a) (1) When the subject of an HIV test is not
4 competent to give consent for the test to be performed, written
5 consent for the test may be obtained from the subject's parents,
6 guardians, conservators, or other person lawfully authorized to
7 make health care decisions for the subject. For purposes of this
8 paragraph, a minor shall be deemed not competent to give consent
9 if he or she is under 12 years of age.
10 (2) Notwithstanding paragraph (1), when the subject of the test
11 is a minor adjudged to be a dependent child of the court pursuant
12 to Section 360 of the Welfare and Institutions Code, written consent
13 for the test to be performed may be obtained from the court
14 pursuant to its authority under Section 362 or 369 of the Welfare
15 and Institutions Code.
16 (3) *Notwithstanding paragraphs (1) and (2), when the subject*
17 *of the test is an infant under one year of age who has been taken*
18 *into temporary custody pursuant to Article 7 (commencing with*
19 *Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare*
20 *and Institutions Code or who has been, or has a petition filed with*
21 *the court to be, adjudged a dependent child of the court pursuant*
22 *to Section 360 of the Welfare and Institutions Code, the social*

1 *worker may provide consent for an HIV test to be performed when*
2 *the infant is undergoing a physical examination pursuant to Section*
3 *324.5 of the Welfare and Institutions Code or is receiving medical*
4 *care pursuant to Section 369 of the Welfare and Institutions Code,*
5 *or the treating health care provider may provide consent if he or*
6 *she determines there are factors indicating that an HIV test should*
7 *be performed.*

8 (b) Written consent shall only be obtained for the subject
9 pursuant to subdivision (a) when necessary to render appropriate
10 care or to practice preventative measures.

11 (c) The person authorized to consent to the test pursuant to
12 subdivision (a) shall be permitted to do any of the following:

13 (1) Notwithstanding Sections 120975 and 120980, receive the
14 results of the test on behalf of the subject without written
15 authorization.

16 (2) Disclose the test results on behalf of the subject in
17 accordance with Sections 120975 and 120980.

18 (3) Provide written authorization for the disclosure of the test
19 results on behalf of the subject in accordance with Sections 120975
20 and 120980.